

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Usage of the Public Switched)
Network by Information Service)
and Internet Access Providers)

CC Docket No. 96-263

COMMENTS OF THE
ASSOCIATION OF ONLINE PROFESSIONALS

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The Association of Online Professionals¹ ("AOP"), hereby submits these comments with respect to the Notice of Inquiry On Internet and Interstate Information Services ("Notice") released on December 24, 1996, regarding policies to facilitate the development of the high-bandwidth data networks of the future.²

¹ Founded in 1994, AOP is the world's largest professional association serving Internet and online information service providers, with nearly 1,000 members in the 50 United States and in 17 other countries. The AOP membership includes Internet service providers, webmasters, system operators of online services, forum managers on all of the major online services (MSN, AOL, CIS, Prodigy and Delphi), and corporate IT managers responsible for remote-access and Internet connectivity. AOP represents more than 500 Internet services in the US alone, ranging from large national providers to small local ISPs. As a non-profit organization representing the industry, AOP's mission is to foster and promote the growth of individuals, organizations and companies that manage Internet and online information services worldwide.

² Usage of the Public Switched Telephone Network by Information Service and Network Access Providers; Notice of Inquiry, CC Docket No. 96-263, FCC No. 96-488 (rel. December 24, 1996) ("Notice").

I. INTRODUCTION AND SUMMARY

The Commission has appropriately concluded that access charges should not apply to interstate Internet Service Providers ("ISPs") or other online services, and the comments made as part of that process have provided a solid legal and policy foundation for that conclusion. This process, however, has raised additional questions related to the technical extension, expansion, or replacement of the Public Switched Telephone Network ("PSTN") to accommodate growing levels of packet-switched data traffic.

While these questions appear to be disparate, relating to numerous aspects of policy and definition with regard to Internet, online and other enhanced services, all of the questions relate directly or indirectly to the issue of who will pay for necessary enhancements to the communication infrastructure to support exponential growth in the use of emerging communications services.

It is generally the position of AOP that this question will be best answered through the competitive processes of a free market, with the technological advances inherent in such a market. Further, AOP believes that the Commission will best serve the interests of the public and the communications and information services industries by maintaining its present policies without change.

There is no question that continued growth in the use of voice, fax and data services will require additional investment in the telephony infrastructure, some of which may be borne by the incumbent local exchange carriers ("ILECs"). Setting aside the question of who will bear the cost, however, leaves extant only the issue of how quickly the investment will be required.

The answer to that question depends on how effectively new technologies can be deployed. Technological and engineering solutions for low-cost expansion of the existing infrastructure already exist, and more effective solutions are under development. Planning

for expansion of the infrastructure has to date, however, focused on relatively inefficient and costly solutions based on old technologies.

Even if the expansion of the infrastructure will require the creation of new networks, there is nothing to guarantee that such networks will be established or managed by the ILECs. The spirit and intent of the Telecommunications Act of 1996 is to open local markets to competition. Cable, satellite, wireless and other infrastructures may well compete with the ILECs to forge the next major network for data transmission.

With respect to the questions posed directly in the FCC Notice of Inquiry ("NOI") of December 24, 1996, AOP recommends the following:

1. That the Commission continue to collect pertinent data on which to base decisions.
2. That the Commission recognize the inherent differences between the many types of communications services, and not attempt to apply the policies, regulations and fees imposed on one type to all others.
3. That the Commission encourage the ILECs and other parties involved in the enhancement of the existing infrastructure to seek efficient solutions to the potential problem of network congestion.
4. That the Commission forebear any existing or new actions until the market has had sufficient time to achieve solutions through competition and technology.

II. THE COMMISSION SHOULD CONTINUE TO COLLECT PERTINENT DATA ON WHICH TO BASE DECISIONS.

During the process related to Access Charge Reform (CC Docket No. 96-262), several ILECs filed comments and claims regarding the potential for loss of service, network outages and crashes, and related dire results related to the exponential growth of

Internet and other data services. Unfortunately, much of this data was anecdotal or unsupported.

There is, therefore, no compelling and reliable data that would support the existence of or trends toward a widespread condition of congestion that cannot be remedied by existing and emerging technologies. Furthermore, the relative paucity of service delays or loss during the past year – at a time of ever-expanding use of packet-switched data services – may in fact indicate that the threat is far less than has been presented.

It is in the best interests of all parties that this question be resolved, and that sound and effective policy be developed if no other solution is possible. Before any effort is made to establish such policy, though, it is critical that data be developed to determine whether and to what degree a problem does or may in the future exist.

The FCC has already initiated the process to develop this data through its own Network Reliability and Interoperability Council.³, and the Council is in the process of collecting data. Further discussion of the issue or action should be withheld until the Council has had the opportunity to evaluate and present its findings.

II. THE COMMISSION SHOULD DIFFERENTIATE BETWEEN TYPES OF ENHANCED SERVICES.

Much of the confusion and discussion of the current proceeding has resulted from attempts to treat enhanced service providers like common carriers, or to otherwise apply definitions, regulations and fees to these providers without respect to their unique natures. The Commission has wisely and consistently refused to lump all of the services together,

³ Notice at ¶ 287 Citing News Release, "Hundt Asks Network Reliability and Interoperability Council to Monitor Impact of Internet Growth on Public Networks," November 1, 1996.

and now questions whether even the current divisions are sufficient to appropriately set policy to encourage their growth.

Clearly, the initial definitions as set forth in 1983 and clarified in 1988 and 1991 are a strong initial step, but are insufficient to guide effective policy in the future. While the definitions affirm that ISPs are not telecommunications carriers⁴, they fall short of recognizing that each type of enhanced service, even though all may be based on digital data transmission, utilize different technologies, economic models and market dynamics.

Telephone, cellular and mobile phone services, for example, tend to utilize per-minute charges (though there is some data indicating that they could easily and profitably convert to a flat-rate economic model such as is currently used for Internet services). Electronic paging, messaging and related services are priced per message unit, whereas fax services are priced both on a per-minute and per-page transmitted or received basis.

Understanding the unique technologies, economic models and market dynamics of the various types of telecommunication and enhanced services would provide a better sense of both the difference and commonalties for each – resulting in more coherent and consistent classifications, as well as the ability to tailor policy specifically to meet the support and growth requirements of each.

II. THE COMMISSION SHOULD ENCOURAGE THE DEVELOPMENT AND DEPLOYMENT OF EFFICIENT AND EFFECTIVE SOLUTIONS TO POTENTIAL NETWORK CONGESTION.

The strongest argument for a free-market resolution to the question of congestion may be seen in the development and introduction of technologies to address or prevent

⁴ See e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, FCC 96-235 at ¶ 995.

such occurrences.

In just the past six months, Lucent Technologies⁵ has announced new software for the 5ESS-2000 digital exchange switch that offers Internet congestion relief, while other technology leaders now offer end-to-end solutions utilizing the existing infrastructure.⁶

Another alternative, which utilizes low-cost copper wiring with Asymmetric Digital Subscriber Line ("ADSL") and related "xSDL" technologies are already available and are being adopted⁷. Meanwhile, another method to relieve congestion through faster connections (resulting in faster downloads and less time online) is offered through new 56 Kbps modem technology. US Robotics has already released its "x2" technology to accomplish this, while a second coalition of Rockwell International, Lucent Technologies and Hayes Microcomputer Products will shortly release another, competitive 56Kbps modem technology.

The technology exists today to make significant progress toward reducing or eliminating potential congestion and to enhance the infrastructure to keep pace with the evolving needs of the public for advanced information and telecommunication services.

The Commission must act to encourage the use of these technologies, and the further development of new and emerging systems that will continue to provide direction to the effort to implement efficient, cost-effective expansion of network capacity and capabilities.

However, it should be noted that simply assigning an access fee to ISPs and other

⁵ See "Lucent Technologies, Inc. Announcement of 'Rapid Software Delivery'", TR Daily, February 5, 1997 at 8.

⁶ See e.g., "No Detours," Telephony, February 3, 1997 at 38-42 ; and "Rerouting Internet Traffic Jams," Telephony, November 11, 1996, at 12

⁷ See e.g., "Editor's Notes," Boardwatch, March, 1997 at 8-16.

enhanced service providers will be detrimental to the goal of encouraging efficiency. While the ILECs are justifiably concerned with the need for expansion of the networks for both voice and data transmissions, the solution is not to simply throw money at the problem. Particularly if the money thrown at the problem is wrested from an ISP community that desperately needs the funds to assure their own growth and continued survival.

Free market forces, including competition and the quest for more efficient technologies, will prevail in this matter if they are allowed to operate without interference. To assign any sort of access fees, regulatory confines or other barriers at this point would serve only to reduce the chances that effective solutions can be identified and implemented.

IV. The Commission should forbear any existing or new actions until the market has had sufficient time to achieve solutions through competition and technology.

The Commission has, over a span of nearly two decades, recognized that the most effective management of communications resources for the nation has often been achieved by allowing the market and its inherent forces of competition and innovation to play out its inevitable course.

Thus, the FCC has repeatedly held that access charges, as currently constituted, fail to reflect economic costs and as such, thwart the development of robust competition.⁸ In doing so, the Commissioners have supported the concept that a competitive marketplace provides the best incentive for the deployment of innovative, quality and economically-priced services and facilities. The FCC has both fostered and championed this concept.

Given the importance of the continued enhancement of the telecommunications and information infrastructure, together with the need to embrace new technologies that will

⁸ See, e.g., Comments of AT&T at 12-18; see also Notice at ¶ 41-42.

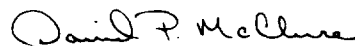
lower costs and enhance effectiveness, it is critical that the FCC look beyond the immediate self interests of any of the parties concerned. Rather, it is imperative that the Commissioners continue to take a deliberate and studied approach devoid of hysterical claims or unsupported allegations.

There is nothing to suggest an impending contingency or emergency that requires an alteration in policy, procedure or fee structures prior to the development of firm data and supported analyses on which to act.

CONCLUSION

The record amply supports the FCC's position that ISPs and other enhanced service providers should be recognized as unique services, and that such legacy policies as carrier access charges are inappropriate. AOP strongly advocates the exposition of competitive and free market forces to drive technological and economically sound change in support of the public's right to effective services, and applauds the Commission for its forthright support of these forces.

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